

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: May 11, 2010
POSITION: Neutral, note concerns
SPONSOR: CDCR Medical Receiver

BILL NUMBER: SB 1399
AUTHOR: M. Leno

BILL SUMMARY: Debilitated and Incapacitated Inmates

This bill would provide that any prisoner who the chief medical officer determines, based on the results of medical evaluations, suffers from a significant and permanent condition, disease, or syndrome resulting in the prisoner being physically or cognitively debilitated or incapacitated shall be granted medical parole, if the Board of Parole Hearings (BPH) determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. This bill would also require the California Department of Corrections and Rehabilitation (CDCR) to enter into memoranda of understanding with the Social Security Administration and the State Department of Health Care Services (DHCS) to facilitate pre-release agreements to help inmates initiate benefits claims, as specified, and pay the state's share of Medi-Cal costs for inmates that have been granted medical parole.

FISCAL SUMMARY

The Receiver indicates that there are currently 32 severely incapacitated inmates, that have approximately \$45 million in medical and custody costs, who could be eligible for medical parole. We note that the Receiver has stated that this bill is a critical component of his plan to achieve the \$811 million reduction that was included in the 2010-11 Governor's Budget. However, we note that recent amendments to this bill require the CDCR to reimburse counties for costs associated with providing medical parolees with a public guardian, CDCR to reimburse providers for medical treatment, and to pay the state's share of Medi-Cal costs, which is currently 34.4%, for uninsured inmates that have been granted medical parole. The bill is also unclear on how long the CDCR would be required to pay these costs.

COMMENTS

The Department of Finance is neutral on this bill, however we note that recent amendments to this bill that require CDCR to pay medical costs significantly reduce savings that could be achieved through medical parole and may diminish the Receiver's ability to achieve the budget reduction.

Existing law provides that the Secretary of CDCR or the BPH may recommend to the court that the prisoner's sentence be recalled and that the court shall have the discretion to resentence or recall if the court finds the inmate is:

- Terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department; or
- Permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.
- Not a threat to public safety.

Analyst/Principal (0234)	Date	Assistant Program Budget Manager	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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Existing law also:

- Provides that the BPH shall make findings, as specified, before making a recommendation for resentencing or recall to the court.
- Provides that within 10 days of receipt of a positive recommendation by the Secretary of the CDCR or the BPH, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.
- Provides that any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis.
- Provides that the warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.
- Provides that the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the Secretary of the CDCR.
- Provides that any recommendation for recall submitted to the court by the Secretary of the CDCR or the BPH shall include one or more medical evaluations, a post-release plan, and specified findings.
- Provides that, if possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.
- Provides that if the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate.
- Provides that the Secretary of the CDCR shall issue a directive, as specified, to medical and correctional staff employed by the CDCR that details the guidelines and procedures for initiating a recall and resentencing procedure

This bill would:

- Provide that, except as specified, any prisoner who the chief medical officer determines, based on the results of medical evaluations, suffers from a significant and permanent condition, disease, or syndrome resulting in the prisoner being physically or cognitively debilitated or incapacitated shall be granted medical parole, if the BPH determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety.
- Provide that medical parole would not apply to any prisoner sentenced to death or life in prison without possibility of parole or to any inmate who is serving a sentence for which parole pursuant to this bill is prohibited by any initiative statute.
- Require that parole placements and revocations shall be made in accordance with the Victim's Bill of Rights Act of 2008: Marsy's Law.
- Require a physician employed by the CDCR who is the primary care provider for a prisoner to recommend that a prisoner be referred to the BPH for consideration for medical parole if the physician believes the prisoner meets the medical criteria for medical parole.
- Provide that the CDCR's Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to parole pursuant to this bill, including, but not limited to, the requirement that parolees submit to electronic monitoring.
- Require the CDCR to, among other things, enter into memoranda of understanding with the Social Security Administration and the DHCS to facilitate prerelease agreements to help inmates initiate benefits claims, as specified, and pay the state share of Medi-Cal costs for inmates that have been granted medical parole.
- Require the State DHCS to seek any federal waivers or approvals necessary for the CDCR to pay the state share of Medi-Cal expenditures associated with inmates granted medical parole.
- Require the CDCR to reimburse counties for the costs associated with providing an inmate granted medical parole with a public guardian.
- Require CDCR to reimburse providers at a rate no lower than the Medi-Cal rate, and long-term care costs of inmates, without insurance, granted medical parole.

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

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Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2009-2010	FC	2010-2011	FC	2011-2012	Code
5225/Corr & Rehab	SO	No	-----	See Fiscal Summary				-----	0001